

1 JOHN L. BURRIS, ESQ. CSB#69888  
2 LAW OFFICES OF JOHN L. BURRIS  
3 Airport Corporate Centre  
4 7677 Oakport Street, Suite 1120  
5 Oakland, CA 94621-1939  
Tel: (510) 839-5200  
Fax: (510) 839-3882  
E/M: [John.Burris@JohnBurrisLaw.com](mailto:John.Burris@JohnBurrisLaw.com)

6 Attorneys for L.W., a minor (plaintiff)

UNITED STATES DISTRICT COURT

**NORTHERN DISTRICT OF CALIFORNIA**

(SAN FRANCISCO--OAKLAND)

13 L.W., a minor, by and through his  
guardian ad litem, Troyreac Henry,

CIVIL NO.

**Plaintiff.**

**COMPLAINT FOR DAMAGES  
(CIVIL RIGHTS VIOLATIONS)**

15

17 CITY OF OAKLAND, a municipal  
18 corporation; BRIAN CLIFFORD, as an  
19 individual and in his official capacity as  
a CITY OF OAKLAND police officer;  
and DOES 1 -25, inclusive,

## JURY TRIAL DEMANDED

20 Defendants.

-----

## JURISDICTION

23       1.     This action arises under Title 42 of the United States Code, Section  
24     1983 and the Fourth and Fourteenth Amendments to the United States Constitution.  
25     Jurisdiction is conferred upon this Court by Title 28 of the United States Code, Section  
26     1331 and 1343. The Northern District is the proper venue in that all the acts  
27     complained of occurred in the City of Oakland in the County of Alameda, which is

1 within this judicial district. Plaintiff requests the Court exercise jurisdiction over  
2 pendent state claims and causes of action under Title 28 of the United States Code,  
3 Section 1367. With respect to state causes of action, plaintiff has filed suit within the  
4 time periods prescribed by California Government Code §§ 911.2 and 945.6. All  
5 administrative requirements precedent to bringing suit against these defendants and  
6 upon the causes of action set forth herein have been fulfilled.  
7

8 PARTIES

9 2. Plaintiff L.W., a minor male, is, and at the time of the incident related  
10 herein was, a natural person, a citizen of the United States, and a resident of the State  
11 of California. Plaintiff L.W. brings this suit through his guardian ad litem, Troyreac  
12 Henry.  
13

14 3. Plaintiff alleges that CITY OF OAKLAND is a governmental entity  
15 subject to suit pursuant to 42 U.S.C. § 1983 and Monell vs Dept. of Social Services,  
16 436 U.S. 658 (1978).

17 4. Defendant BRIAN CLIFFORD and DOES 1 through 25 were at all  
18 times mentioned herein employed by defendant CITY OF OAKLAND in the Oakland  
19 Police Department. They are sued both in their official capacities as law enforcement  
20 officers for the CITY OF OAKLAND and as individuals personally liable for their  
21 own actions. In engaging in the conduct described herein, while said defendants acted  
22 under the color of law in the course and scope of their employment, they exceeded the  
23 authority vested in them by the United States Constitution and by the CITY OF  
24 OAKLAND.  
25

26 5. Plaintiff is ignorant of the names and capacities, whether individual,  
27 corporate, associate, or otherwise, of defendants named herein, as DOES 1 through 25,  
28

1 inclusive and therefore sues these defendants by such fictitious names. Plaintiff will  
2 amend this complaint to allege their true names and capacities when ascertained.  
3 Plaintiff is informed and believes and thereon alleges that each of the fictitiously  
4 named defendants is responsible in some manner for the occurrences herein alleged,  
5 and that Plaintiff's damages herein alleged were proximately caused by such  
6 defendants.  
7

8. Plaintiff is informed and believe and hereon alleges that at all times  
9. mentioned, defendants, including those defendants sued as "DOE", and each of them,  
10. were the agents and employees of each of the other defendants, and in doing the  
11. things hereinafter alleged were acting within the scope of their authority as such  
12. agents and employees, and with the permission and consent of each other. The  
13. relationships between defendants were and are created by agreement, by ratification,  
14. by ostensible authority or otherwise, and this paragraph is not a limitation on the  
15. manner in which said relationships were created as a matter of fact or a matter of law.

## STATEMENT OF FACTS

22       8. On April 8, 2013, plaintiff L.W., along with friends, was walking in  
23 downtown Oakland. At approximately 10:30 p.m. they were walking in the direction  
24 of the Mexicali Rose restaurant and encountered persons not known to them who were  
25 intoxicated and belligerent. Plaintiff and his friends turned and were walking away  
26 when a CITY OF OAKLAND police officer, who was parked nearby in a patrol car,  
27 drove towards plaintiff and, exiting the car, aimed her firearm at plaintiff and told him

1 and his friends to “freeze”. Plaintiff and his friends complied but in short order,  
2 additional patrol cars arrived. Soon, plaintiff and his friends, all minors, were faced  
3 with numerous officers pointing firearms at them. No actions were taken by plaintiff  
4 or his friends that threatened the officers. They were wearing light clothing and their  
5 bare arms and hands were visible. The situation was fully controlled. At that point, an  
6 officer who plaintiff is informed and believes was BRIAN CLIFFORD (“CLIFFORD”  
7 or “Defendant”) arrived in a patrol, yelled at plaintiff and his friends to lie down on the  
8 ground. He then shot at Plaintiff without lawful cause, placing Plaintiff in immediate  
9 fear of death. Plaintiff was placed in handcuffs, taken to the hospital and subsequently  
10 booked into jail. He was released the next day without being charged with any offense.  
11  
12

### **DAMAGES**

13  
14 9. Plaintiff sustained severe emotional distress and trauma with flashbacks  
15 to the incident as a proximate result of being shot at and seeing one of his friends shot  
16 in the face on that occasion by CLIFFORD. As a proximate result of defendants'  
17 conduct, and each of them, plaintiff suffered severe emotional distress, anxiety,  
18 embarrassment, and loss of his sense of security, dignity, and pride as an African-  
19 American as a result of the unlawful detention and arrest, and unlawful use of force.  
20 The conduct of defendant CLIFFORD, and DOES 1-25, was malicious, oppressive and  
21 grossly reckless, warranting punitive damages. Plaintiff seeks recovery of those  
22 damages in addition to general damages.  
23

24 10. Plaintiff found it necessary to engage the services of private counsel to  
25 vindicate his rights under the law and is therefore entitled to an award of all attorneys'  
26 fees incurred in relation to this action for violation of his civil rights.  
27  
28

FIRST CAUSE OF ACTION  
Violation of 42 U.S.C. § 1983  
(CLIFFORD and DOES 1 – 25)

11. Plaintiff hereby incorporates paragraphs 1 through 10 by reference, as though fully set forth herein.

12. In doing the acts complained of herein, defendants acted under color of law to deprive plaintiff of certain constitutionally protected rights, including, but not limited to the right not to be deprived of liberty without due process of law and the right to be free from unlawful seizure, including excessive or wrongful use of force.

13. As a proximate result of defendants' wrongful conduct, plaintiff suffered injuries and damages as set forth herein.

WHEREFORE, Plaintiff prays for relief as set forth herein.

**SECOND CAUSE OF ACTION**  
Assault and Battery  
(CLIFFORD and DOES 1 – 25)

14. Plaintiff hereby incorporates paragraphs 1 through 13 by reference as though fully set forth.

15. Defendants committed assault and battery upon the person of Plaintiff by aiming firearms at him and behaving in a manner that made him fear of imminent death or great bodily injury, through their unwarranted use of force, shooting at him and his friends and placing him in handcuffs, although he was no threat to them or anyone else. Plaintiff did not consent to this treatment and it was not excused by circumstance or by law. This conduct caused Plaintiff emotional distress and humiliation.

16. The aforementioned acts of the individual Defendants were willful, wanton, malicious and oppressive and undertaken with conscious disregard of the

1 rights of Plaintiff entitling Plaintiff to exemplary and punitive damages in an amount  
2 appropriate to punish or set an example of Defendants for the public good.

3 WHEREFORE, Plaintiff prays relief and judgment as set forth herein.  
4

5 **THIRD CAUSE OF ACTION**  
6 California Civil Code §52.1(b)  
7 (CLIFFORD and DOES 1 – 25)

8 17. Plaintiff hereby incorporates paragraphs 1 through 16 by reference, as  
9 though fully set forth herein.

10 18. The conduct of Defendants, as described herein, interfered with  
11 Plaintiff's enjoyment of his rights under the constitution of the state of California,  
12 including his right to be free from violence or the threat of violence. Under the  
13 provisions of the Civil Code, Defendants are liable for exemplary damages and for  
14 twenty-five thousand dollars (\$25,000) in addition thereto for each offense, and for the  
15 payment of plaintiff's attorney fees.

16 19. As a proximate result of defendants' wrongful conduct, Plaintiff  
17 suffered violations of his constitutional rights and sustained damages.  
18

19 WHEREFORE, plaintiff prays for relief as set forth herein.

20 **FOURTH CAUSE OF ACTION**  
21 Intentional Infliction of Emotional Distress  
22 (CLIFFORD and DOES 1 – 25)

23 20. Plaintiff hereby incorporates paragraphs 1 through 19 by reference as  
24 though fully set forth.

25 21. Defendants intended to shoot in the direction of plaintiff and handcuff  
26 Plaintiff and knew, or had reason to know that such conduct would cause Plaintiff  
27 severe emotional distress and it did in fact cause Plaintiff severe emotional distress,  
28 mental anguish and humiliation.

1       22. The aforementioned acts of the individual defendants were willful,  
2 wanton, malicious and oppressive and undertaken with conscious disregard of the  
3 rights of Plaintiff entitling Plaintiff to exemplary and punitive damages in an amount  
4 appropriate to punish or set an example of defendants for the public good.

WHEREFORE, plaintiff prays relief and judgment as set forth herein.

**FIFTH CAUSE OF ACTION**  
False Imprisonment/Illegal Detention  
(CLIFFORD and DOES 1 – 25)

9           23. Plaintiff hereby incorporates paragraphs 1 through 22 by reference as  
10           though fully set forth.

12        24. Defendants restrained plaintiff, without just cause, when they placed  
13 him in handcuffs against his will prior to placing him under arrest and transporting to  
14 jail and further by causing his confinement in jail.

15       25.     The aforementioned acts of the individual defendants were willful,  
16           wanton, malicious and oppressive and undertaken with conscious disregard of the  
17           rights of plaintiff entitling plaintiff to exemplary and punitive damages in an amount  
18           appropriate to punish or set an example of defendants for the public good.

23 WHEREFORE, plaintiff prays relief and judgment as set forth herein.

SIXTH CAUSE OF ACTION  
Negligence  
(CLIFFORD and DOES 1 – 25)

27. Plaintiff incorporates paragraphs 1 through 26 by reference, as though  
28. fully set forth.

1       28. At all times herein mentioned, defendants were subject to a duty of care,  
2 to avoid causing unnecessary physical harm and distress to citizens in the exercise of  
3 the police function. The conduct of defendants, as set forth herein, did not comply  
4 with that standard of care, proximately causing plaintiff to suffer damages as set forth  
5 herein.  
6

7                   WHEREFORE, plaintiff prays for relief as set forth herein.

8                   **JURY DEMAND**

9       29. Plaintiff demands that a jury try this matter.

10                   **PRAYER**

11                   WHEREFORE, plaintiff prays for relief as follows.

12                   1. special damages in an amount to be ascertained according to proof;  
13                   2. general damages to be proven;  
14                   3. statutory penalties;  
15                   4. punitive damages against individually named defendants in an amount  
16                   sufficient to punish their conduct and to set an example such that similar  
17                   conduct is abated and/or deterred;  
18                   5. reasonable attorney's fees;  
19                   6. costs of suit incurred herein; and  
20                   7. such other and further relief as the Court may deem just and proper.

23                   Dated: April 21, 2014

24                   LAW OFFICES OF JOHN L. BURRIS

26                   By: \_\_\_\_\_  
27                   John L. Burris, Esq.  
28                   Attorneys for L.W., a minor